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CW Building Maintenance and Service Employees International Union, SEIU Local 87. Case 20–CA–272158

July 1, 2021

DECISION AND ORDER¹

BY CHAIRMAN MCFERRAN AND MEMBERS EMANUEL
AND RING

The General Counsel seeks a default judgment in this case on the ground that CW Building Maintenance (the Respondent) has failed to file an answer to the complaint and the compliance specification. Upon a charge filed by the Service Employees International Union, SEIU Local 87 (the Union) on February 1, 2021,² the Acting General Counsel issued a consolidated complaint, compliance specification, and notice of hearing (the complaint and compliance specification) on April 16, notifying the Respondent that an answer must be filed by May 7, in conformity with the Board's Rules and Regulations. On May 10, the Respondent was notified that an answer to the complaint and compliance specification had not been received and if an answer was not received by May 17, a motion for default judgment would be filed. To date, the Respondent has not filed an answer.

On May 18, the Acting General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. On May 21, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent, though duly served with both the Motion for Default Judgment and the Notice to Show Cause, has not filed a response.³ The allegations in the motion and the complaint and compliance specification are therefore undisputed.

Ruling on the Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. Similarly, Section 102.56 of the Board's Rules and Regulations provides that the allegations in a compliance specification will be taken as true if an answer is not filed within 21 days from service of the compliance

specification. In addition, the complaint and compliance specification affirmatively stated that the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint and compliance specification are true unless an answer was received by May 7. Further, the undisputed allegations in the Acting General Counsel's motion disclose that the Region by letter dated May 10, notified the Respondent that unless an answer was received by May 17, the Board may find that the allegations in the complaint and compliance specification are true. Nevertheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file a timely answer, we grant the Acting General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a corporation with an office and place of business in San Francisco, California (the Respondent's facility), and has been engaged in the business of providing janitorial services to office buildings.

During the calendar year ending December 31, 2019, the most recent calendar year preceding the alleged violation, the Respondent in conducting its operations described above, purchased and received at its San Francisco, California facility goods valued in excess of \$50,000 directly from points outside the State of California.

At all material times, the Respondent has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals have held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Michelle Redding	-	President
Clarence Williams	-	Owner

The following employees of the Respondent (the unit) constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

¹ The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

² Hereinafter, all dates are in 2021.

³ The Motion for Default Judgment and attached exhibits indicates that the consolidated complaint and compliance specification was served

on the Respondent by certified mail on April 16, 2021. There is no indication that this mailing was unclaimed or returned. In addition, the tracking information provided by the U.S. Postal Service shows that the Respondent accepted delivery of both the Motion for Default Judgment and the Notice to Show Cause.

All employees working under the provisions of the Collective-Bargaining Agreement between the Union and the San Francisco Maintenance Contractors Association in effect from August 1, 2016 through July 31, 2020.

Since February 24, 2013, and at all material times, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from August 1, 2016, to July 31, 2020 (the Agreement).

At all material times since February 24, 2013, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since August 3, 2020, the Respondent has failed to make pension fund contributions to the Service Employees International Union National Industry Pension Fund on behalf of unit employees as required by Section 16 of the Agreement.

The terms and conditions of employments described above are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct.⁴

CONCLUSIONS OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the purposes of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to make pension fund contributions to the Union's National Industry Pension Fund on behalf of unit employees since August 3, 2020, and continuing through January 31, 2021, as required by Section 16 of the

Agreement, we shall order it to make delinquent pension fund contributions in the amounts set forth in the Attachment, plus interest accrued to the date of payment at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010), and minus tax withholdings required by State and Federal laws.⁵

In addition, the Respondent shall make the employees whole for any expenses they may have incurred as a result of the Respondent's failure to make such payments as set forth in the Attachment and *Kraft Plumbing & Heating*, 252 NLRB 891, 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed by *New Horizons*, above, compounded daily as prescribed by *Kentucky River*, above.⁶

Finally, because the Respondent's facility appears to have closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former unit employees to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, CW Building Maintenance, San Francisco, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with the Service Employees International Union, SEIU Local 87 as the exclusive collective-bargaining representative of employees in the following unit by unilaterally failing to make pension fund contributions to the Service Employees International Union National Industry Pension Fund as required by Section 16 of the Agreement without first notifying the Union and giving it an opportunity to bargain:

All employees working under the provisions of the Collective-Bargaining Agreement between the Union and the San Francisco Maintenance Contractors Association in effect from August 1, 2016 through July 31, 2020.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

⁴ The complaint includes a statement that the Respondent engaged in this conduct without first bargaining with the Union to an overall good-faith impasse for a successor collective-bargaining agreement. However, in the absence of a complaint allegation that the Union requested bargaining with the Respondent for a successor agreement and the Respondent refused, we decline to order a remedy based on this assertion.

⁵ According to the complaint and compliance specification, the Respondent ceased operations on January 31, 2021, and no longer employs any unit employees.

⁶ To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Remit to the Service Employees International Union National Industry Pension Fund on behalf of Joaquin Lomeli, Lesbia Campos, Jennifer Lomeli, Fernando Espinoza, Susana Lomeli, and Xavier Coronado the amounts shown opposite their names in the Attachment, plus interest accrued to the date of payment and minus tax withholdings required by Federal and State laws, as set forth in the remedy section of this decision.

(b) Make whole, with interest, the employees identified above for any expenses they may have incurred as a result of the Respondent's failure to make contributions to the pension fund, in the manner set forth in the remedy section of this decision.

(c) Preserve and, within 14 days of a request or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents all payroll records, social security payment records, timecards, personnel records, and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the remittances due under the terms of this Order.

(d) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix,"⁷ to the Union and to all unit employees who were employed by the Respondent at any time since August 3, 2020. In addition to the physical mailing of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.⁸

(e) Within 21 days after service by the Region, file with the Regional Director for Region 20 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 1, 2021

Lauren McFerran,

Chairman

⁷ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

⁸ In light of the apparent permanent closure of the facility involved in these proceedings, we do not modify the notification remedy as set forth

William J. Emanuel, Member

John F. Ring, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with the Service Employees International Union, SEIU Local 87 as the exclusive collective-bargaining representative of employees in the following unit by unilaterally failing to make pension fund contributions to the Union's National Industry Pension Fund as required by Section 16 of the Agreement without first notifying the Union and giving it an opportunity to bargain:

All employees working under the provisions of the Collective-Bargaining Agreement between the Union and the San Francisco Maintenance Contractors Association in effect from August 1, 2016 through July 31, 2020.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

in *Danbury Ambulance Service, Inc.*, 369 NLRB No. 68 (2020) (holding that, if facility involved in proceedings is closed due to Coronavirus Disease 2019 (COVID-19) pandemic, notification obligation is delayed until 14 days after facility reopens and substantial complement of employees have returned to work).

WE WILL remit to the Service Employees International Union National Industry Pension Fund on behalf of Joaquin Lomeli, Lesbia Campos, Jennifer Lomeli, Fernando Espinoza, Susana Lomeli, and Xavier Coronado the amounts set forth in the Board's Order, plus interest to the date of payment.

WE WILL make whole, with interest, the employees identified above for any expenses they incurred as a result of our failure to make contributions to the pension fund.

CW BUILDING MAINTENANCE

The Board's decision can be found at www.nlr.gov/case/20-CA-272158 or by using the QR

code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



ATTACHMENT

Employee Name	HR WRKD August	HR WRKD September	HR WRKD October	HR WRKD November	HR WRKD December	HR WRKD Jan 2021	HR total per EE	CBA Rate	Surcharge/ Supplemental Rate	Total (hours x CBA rate + surcharge)	Interest Due*	Liquidated Damages	
Joaquin Lomeli	168	176	176	168	184	168	1040	\$1.15	132.0%	\$2,776.80	\$34	\$138.80	
Lesbia Campos	168	176	176	168	184	168	1040	\$1.15	132.0%	\$2,776.80	\$34	\$138.80	
Jennifer Lomeli	168	176	176	168	184	168	1040	\$1.15	132.0%	\$2,776.80	\$34	\$138.80	
Fernando Espinoza	168	176	176	168	184	168	1040	\$1.15	132.0%	\$2,776.80	\$34	\$138.80	
Susana Lomeli	168	176	176	168	184	168	1040	\$1.15	132.0%	\$2,776.80	\$34	\$138.80	
Xavier Coronado	168	176	176	168	184	168	1040	\$1.15	132.0%	\$2,776.80	\$34	\$138.80	
Totals	1008	1056	1056	1008	1104	1008	6240	\$7,176.00	\$9,472.32	\$16,648.32	\$204	\$832.80	\$17,685.12

* Calculated through April 7, 2021